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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

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Honorable Joey Masters
Marshall County Revenue Commissioner
424 Blount Avenue
Guntersville, Alabama 35976

Supernumerary Status - Revenue
Commissioners - Tax Collectors -
Service Credit

Section 40-6-4 of the Code of Alabama authorizes the purchase of previous service time for persons electing to become a supernumerary pursuant to section 40-6-1(a)(2) or (b) of the Code. Section 40-6-4 does not allow persons electing to become a supernumerary pursuant to section 40-6-1(a)(1) to purchase previous service time.

Section 40-6-4 sets out the appropriate procedures for purchasing previous service time.

Dear Commissioner Masters:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

Can a revenue commissioner buy back six years of service time?

What are the procedures for buying this time back?

FACTS AND ANALYSIS

In your letter of request, you stated the following:

I was elected Tax Assessor of Marshall County in 1990. My term began October 1, 1991, and ended on September 30, 1997. During my six-year term, I participated in the supernumerary program. In 1996, I ran for reelection, but I was not successful. At the end of my term, I received the money that had been paid into the supernumerary program.

In December 1999, I was appointed Tax Collector of Marshall County by Governor Siegelman. I began serving as tax collector on January 1, 2000, and ended on September 30, 2003.

In 2000, the citizens of Marshall County voted to combine the offices of tax assessor and tax collector. The new position would be revenue commissioner. The election was in 2002, and the new term for revenue commissioner began on October 1, 2003. I was elected Revenue Commissioner of Marshall County in 2002 and my term began on October 1, 2003. I am currently participating in the supernumerary program. I have been participating since January 1, 2000, when I took office as tax collector.

Your initial question contemplates the ability of a revenue commissioner to purchase or "buy back" previous service time to attain supernumerary status. Section 40-6-1 sets forth the necessary conditions for a person to qualify for the supernumerary program. This section states as follows:

(a) In the various counties of the State of Alabama having a population of less than 600,000 inhabitants according to the last or any subsequent federal decennial census, any tax collector, tax assessor, revenue commissioner, license commissioner, or other elected or appointed official charged with the assessment or collection, or both, of ad valorem taxes in any county of the State of Alabama:

(1) Who has served for 14 years as such an official in any county of Alabama and who has become permanently and totally disabled, proof of disability being made by certificate of three reputable physicians; or

(2) Who has served for 12 years as a county official for any county of Alabama, at least 10 years or more continuously as tax collector, tax assessor, license commissioner, revenue commissioner, or other elected or appointed official charged with the assessment or collection, or both, of ad valorem taxes, and who is not less than age 60;

May elect to become a supernumerary tax collector, tax assessor, revenue commissioner, license commissioner, or other elected or appointed official charged with the assessment or collection, or both, of ad valorem taxes of the county in which the official serves by filing a written declaration to that effect with the Governor. If the Governor finds any declarant qualified either under subdivision (1) or (2) of this subsection, a commission as supernumerary tax collector, tax assessor, revenue commissioner, license commissioner, or other elected or appointed official charged with the assessment or collection, or both, of ad valorem taxes for the county in which the official has served shall be issued to the declarant by the Governor. In computing length of service, the time served as any other county-wide elected official or the time served as chief clerk of the tax collector, tax assessor, license commissioner of any county, shall be counted.

(b) In the various counties of the State of Alabama having a population of less than 600,000 inhabitants according to the last or any subsequent federal decennial census, any person who has served 18 years as a county official for any county of Alabama, the last six or more years as tax collector, tax assessor, revenue commissioner, license commissioner, or other elected or appointed official charged with the assessment or collection, or both, of ad valorem taxes, and previously

at least 12 years as chief clerk to the tax collector, tax assessor, revenue commissioner, license commissioner, or other elected or appointed official charged with the assessment or collection, or both, of ad valorem taxes, or previously at least 12 years as a county commissioner, who is not less than age 60 or who has become permanently and totally disabled, proof of that disability being made by certificate of three reputable physicians, may elect to become a supernumerary tax collector, tax assessor, revenue commissioner, license commissioner, or other elected or appointed official charged with the assessment or collection of taxes, or both, by filing a written declaration to that effect with the Governor. If the Governor finds that any declarant is qualified under this subdivision, a commission as supernumerary tax collector, tax assessor, revenue commissioner, license commissioner, or other elected or appointed official charged with the assessment or collection, or both, of ad valorem taxes, for the county in which the official has served shall be issued to the declarant.

ALA. CODE § 40-6-1 (2003). Although section 40-6-1 of the Code offers various ways for a tax assessor to elect to become a supernumerary, credible service time for the supernumerary program is computed on the basis of a person having paid the amounts due under section 40-6-4 of the Code of Alabama. Opinion to the Honorable Theolyn Hardy, Tax Assessor, Lamar County, dated June 19, 1995, A.G. No. 95-00242; opinion to Honorable Bobby Jack Griffin, Tax Collector, Butler County, dated September 3, 1991, A.G. No. 91-00384.

Section 40-6-4 of the Code of Alabama sets out the manner of funding for the supernumerary program for a tax collector, tax assessor, revenue commissioner, license commissioner, or other elected official charged with the assessment or collection, or both, of any ad valorem taxes of the county. This statute states, in pertinent part, as follows:

The governing body shall deduct from the salary of the tax collector, tax assessor, revenue commissioner, license commissioner, or other elected official charged with the assessment or collection, or both, of any ad valorem taxes of the county, if the officials are paid by salary, an amount equal to seven percent of the annual salary paid the official by the county. The

sum shall be deducted monthly and distributed at the end of the fiscal year on a pro rata millage basis to the state, county, and all subdivisions and agencies thereof, except municipal corporations, to which ad valorem taxes are paid . . . *Any person desiring to come under this chapter pursuant to subdivisions (a)(2) or (b) of Section 40-6-1, shall pay to the county tax collector such proportionate sum as to equal the amount he or she would have been required to pay if he or she were employed as a tax collector, tax assessor, revenue commissioner, license commissioner, or other elected or appointed official charged with the assessment or collection, or both, of ad valorem taxes of the county, and the proportionate sum shall be distributed by the tax collector as provided in this section.*

ALA. CODE § 40-6-4 (2003) (emphasis added).

In a subsequent conversation with this Office, you expanded your initial question. Specifically, you stated that you sought to purchase previous service time because you were contemplating the possibility of attaining supernumerary status pursuant to section 40-6-1(a)(1) of the Code. As such, the previous time served was necessary to accomplish this end.

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000). Section 40-6-4 of the Code clearly states that persons desiring to attain supernumerary status pursuant to section 40-6-1(a)(2) or (b) shall pay appropriate funds to the tax assessor. Under the principle of *expression unis est exclusion alterius*, a rule of statutory construction, where a statute enumerates certain things on which it is to operate, the statute must be construed as excluding from its effect all things not expressly mentioned. *Ex parte T.B.*, 698 So. 2d 127, 129 (Ala. 1997). Because section 40-6-4 did not authorize someone seeking supernumerary status pursuant to section 40-6-1(a)(1) the opportunity to purchase service time, it is the opinion of this Office that a person seeking to attain supernumerary status pursuant to section 40-6-1(a)(1) is unable to purchase previous service time.

Your second question requests guidance as to the procedures necessary for a person to purchase previous service time. Section 40-6-4 sets forth the appropriate deductions that must be made for tax assessors who are paid on

either a salary- or fee-based schedule. Those deductions are thereafter distributed to various accounts on a pro rata millage basis. The statute goes on to state that, in instances in which a person seeks to purchase service time, that person must *"pay to the county tax collector such proportionate sum as to equal the amount he or she would have been required to pay if he or she were employed as a tax collector, . . ."* and this sum is thereafter distributed by the tax collector as provided within that section. ALA. CODE § 40-6-4 (2003) (emphasis added). Because you are serving as the revenue commissioner, which is the combined office of the tax assessor and tax collector, you would be responsible for distributing the funds for purchasing the time in compliance with section 40-6-4 of the Code. At the time you choose to purchase time, you should notify the county commission so that the county records will reflect the appropriate service time.

CONCLUSION

Section 40-6-4 authorizes the purchase of previous service time for persons electing to become a supernumerary pursuant to section 40-6-1(a)(2) or (b) of the Code of Alabama. Section 40-6-4 does not allow persons electing to become a supernumerary pursuant to section 40-6-1(a)(1) to purchase previous service time.

Section 40-6-4 sets out the appropriate procedures for purchasing previous service time.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division